

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 50 of 2005 (S/B)

Date of Decision: 4th July, 2005

A.F.R. (Approved for Reporting)

Not Approved for Reporting

Date

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 50 of 2005 (S/B)

Thaneshwar Prasad Kundalia,
S/o Late Sri B.D. Kundalia,
Serving as Regional Transport Officer,
Kumaon Region, Haldwani,
District Nainital.

..... Petitioner

Versus

State of Uttaranchal
Through Principal Secretary,
Transport Department, Govt. of Uttaranchal,
Civil Secretariat,
Dehradun & another.

..... Respondents

Mr. Mahavir Singh, Advocate a/b Mr. S.K.Jain and Munish Bhardwaj , learned counsel
for the petitioners.

Mr. B.D.Kabdpal, Standing Counsel for the State of Uttarnchal.

Coram: Hon'ble Cyriac Joseph, C.J.

Hon'ble Rajesh Tandan, J.

[Per Hon'ble Chief Justice (Oral)]

1. The petitioner was recruited to the Short Service (Non-Technical) Vth Course of the Indian Army and he joined the Indian Army on 21.08.1967. After training he was commissioned as an officer of the Indian Army on 23.06.1968. The petitioner was discharged from the Indian Army on 09.04.1976. Thereafter, the was appointed as Secretary of the District Soldier Board on 17.11.1976 and he worked in that capacity till 10.01.1988. In the meanwhile, the petitioner passed the Provincial Civil Services (PCS) Examination and he was appointed as Assistant Regional Transport Officer (Enforcement) as per order dated 30.11.1987. He joined service of the Government of Uttar Pradesh as Assistant Regional Transport Officer (Enforcement) on 11.01.1988. On formation of the State of Uttaranchal, the petitioner has been allotted to the State of Uttaranchal and at present, he is working as Regional Transport Officer, Kumaon Region.

2. Under the Uttar Pradesh Non-Technical (Class II / Group B) Services (Appointment of Demobilized Officers) Rules 1980, emergency commissioned officers and short service commissioned officers of the armed forces of the Union who were commissioned on or after November 01, 1962 but before January 10, 1968 or on or after December 03, 1971 and released at any time thereafter and got appointment in terms of Rule 4 of the above-mentioned Rules, are entitled to the benefit of counting the period of service in the Army for the purpose of determining the length of service for the purpose of seniority in Government service. The petitioner and similarly placed Government employees had filed writ petitions before the High Court of Allahabad challenging the discrimination shown against those who were commissioned after 10th January 1968 and before 3rd December 1971. They contended that the denial of the benefit of counting the period of service in the Army to such officers, is arbitrary and discriminatory. Though the High Court upheld the contention of the petitioner and other Government employees and allowed the writ petitions filed by them, the State of Uttar Pradesh filed appeals before the Supreme Court and in the judgment reported in 1994(2) SCC 622, the Supreme Court allowed the appeals and set aside the judgment of the High Court. The Supreme Court upheld the classification between the officers commissioned prior to 10th January 1968 and those commissioned after 10th January 1968.

3. Subsequently, one Jitendra Nath who had been recruited to the Indian Army along with the writ petitioner for the Short Service (Non-Technical) Vth Course and had joined the Indian Army on 17.08.1967 and was commissioned like the petitioner on 23.06.1968, filed a writ petition in the Allahabad High Court contending that those who had joined the Army and were undergoing training prior to 10th January 1968, but were commissioned only after 10th January 1968, also should be given the benefit of the Army service for the purpose of counting seniority in the Government service. Though the High Court allowed the writ petition, the State of Uttar Pradesh filed appeal before the Supreme Court. However, by order dated 16.01.1995 passed by the Supreme Court in Civil Appeal Nos. 837 and 838 of 1995 (Annexure 7 to this writ petition), the Supreme Court dismissed the appeal

filed by the State of Uttar Pradesh and held that Shri Jitendra Nath who joined the Army for training on 17.08.1967 and was commissioned only on 23.06.1968 was entitled to the above mentioned benefit as he was undergoing training w.e.f. 17.08.1967. Considering the effect of Rule 3 of the above-mentioned Rules and the need for undergoing actual training before the commissioning of officers, the Supreme Court held that officers like Jitendra Nath also are entitled to the benefit of the Rules.

4. Realising that the similarly placed person was declared to be entitled for the benefit under the Rules, the petitioner also filed representation before the Government of Uttaranchal seeking the very same benefit under the Rules. However, as per Annexure 11 Order dated 29.03.2005, the first respondent rejected the request of the petitioner on the ground that the benefit of the order in Jitendra Nath's case is available only to Jitendra Nath and not to the petitioner.

5. It is under the above circumstances that the petitioner has filed this writ petition praying to quash Annexure 11 Order and to direct the respondents to extend to him the benefit under the above-mentioned Rules as in the case of Jitendra Nath. Respondent no.1 has filed a counter affidavit contesting the claim of the petitioner and justifying Annexure 11 order dated 29.03.2005. The petitioner has filed a rejoinder affidavit also.

6. We have heard Mr. Mahavir Singh, learned counsel for the petitioner and Mr. B.D. Kandpal, learned Standing Counsel for the State of Uttaranchal. We have also considered the averments contained in the writ petition, the counter affidavit and the rejoinder affidavit.

7. The first respondent has no case that the petitioner's case is not similar to that of Jitendra Nath, respondent in Civil Appeal Nos. 837 and 838 of 1995 before the Supreme Court. The only contention is that the benefit of the order of the Supreme Court in Civil Appeal No. 837 and 838 of 1995 (Annexure 7 to the writ petition) can be claimed only by the said Jitendra Nath. However, when the petitioner's case is admittedly similar to that of

Jitendra Nath and when the petitioner claims the same benefit which was extended to Sri Jitendra Nath, there is no reason why the petitioner should be treated differently from the said Jitendra Nath. In our view, since the case of the petitioner is similar to the case of Sri Jitendra Nath whose claim was upheld by the Hon'ble Supreme Court, the petitioner also is entitled to the benefit extended to Sri Jitendra Nath. In this view of the matter Annexure 11 order is liable to be quashed and the first respondent is liable to be directed to extend to the petitioner the benefit extended to Sri Jitendra Nath and to take into account the Army service rendered by the petitioner for fixing his seniority in the Transport Department.

8. Mr. B.D.Kandpal, learned Standing Counsel for the first respondent submitted that unless the judgment of the Supreme Court in Civil Appeal No.358 of 1994 filed by the State of Uttar Pradesh against the judgment of the High Court of Allahabad in Writ Petition No. 29711 of 1992 filed by the petitioner, is not reviewed, the petitioner cannot be granted the relief sought in this writ petition. We do not find any merit in this contention. In the judgment of the Supreme Court in Civil Appeal No.358 of 1994, the only issue considered and decided was whether the classification between the officers, who were commissioned prior to 10th January, 1968 and after 10th January, 1968 was discriminatory or not. The question whether an officer who had joined the training prior to 10th January, 1968 and on successful completion of the training was commissioned after 10th of January, 1968 is entitled to the benefit under the Rules, was not considered or decided by the High Court or the Supreme Court in the earlier case. The above question was considered and decided by the High Court and the Supreme Court only in Jitendra Nath's case. In Jitendra Nath's case, both High Court of Allahabad and the Supreme Court of India held that an officer who had joined the training prior to 10th January, 1968 and on successful completion of training was commissioned after 10th January, 1968 is entitled to the benefit under the Rules. Hence, the judgment of the Supreme Court in Civil Appeal No. 358 of 1994 does not stand in the way of allowing the prayer in this writ petition.

9. In the above circumstances, the writ petition is allowed. Annexure 11 order is quashed. The first respondent is directed to take into account the Army service rendered by the petitioner in fixing his seniority in the Transport Department of the first respondent. The first respondent shall reconsider Annexure 9 representation of the petitioner and pass fresh orders in the light of the above directions as expeditiously as possible and at any rate within a period of two months from the date of the receipt of a copy of this judgment.

(Rajesh Tandon, J.)

04.07.2005

(Cyriac Joseph, C.J.)

04.07.2005

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